

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FROYLAN MEDINA CHIPREZ,
Plaintiff,
v.
CORRECTIONAL OFFICER
FRANCO, et al.,
Defendants.

Case No. [20-cv-00307-YGR](#) (PR)

**ORDER OF PARTIAL DISMISSAL;
AND DISMISSING AMENDED
COMPLAINT WITH LEAVE TO
AMEND**

I. INTRODUCTION

Plaintiff, a state prisoner currently incarcerated at the California Substance Abuse and Treatment Facility (“CSATF”) and proceeding *pro se*, filed the above-titled civil rights action under 42 U.S.C. § 1983 stemming for alleged constitutional violations that took place at Salinas Valley State Prison (“SVSP”), where he was previously incarcerated. The Court has granted Plaintiff’s motion for leave to proceed *in forma pauperis*. Dkt. 6.

The original complaint was dismissed with leave to amend. Dkt. 7. Thereafter, Plaintiff filed his amended complaint, which is the operative complaint in this action. Dkt. 8. When he filed his original complaint, Plaintiff had named the following Defendants: California Attorney General Xavier Becerra; Former Attorney General Kamala D. Harris; Former Senior Assistant Attorney General Julie L. Garland; Former Supervising Deputy Attorney Generals Eric A. Swenson and Robin Urbanski; Former Deputy Attorney Generals Kristine A. Gutierrez and Lynne G. McGinnis; Deputy Attorney General Heidi Salerno; SVSP Warden M. L. Muniz; and SVSP Lieutenant Poodry. He also named the following Doe Defendants at SVSP: Assistant Warden; Watch Commander; I.G.I.; Mailroom Sergeant; B-Yard Captain; and B-Yard Sergeants. Dkt. 1 at 11.¹ Lastly, Plaintiff had listed several Defendants from CSATF, who have all been dismissed from this action without prejudice to Plaintiff’s filing separate actions asserting those claims in the

¹ Page number citations refer to those assigned by the court’s electronic case management filing system and not those assigned by Plaintiff.

United States District Court for the Eastern District of California, which is the proper venue for claims based on acts and omissions at CSATF. Dkt. 7 at 1-2. Plaintiff originally sought injunctive relief as well as monetary and punitive damages. *Id.* at 13.

In his amended complaint, Plaintiff has again named a few Doe Defendants from SVSP, who he describes as follows: (1) “B-Yard 3rd Watch [Correctional Officer] that received Federal Writ on 2-15-2018 SVSP B-4-127”; and (2) “[Correctional Officer] [in Administrative Segregation (“Ad Seg”)] Z-9 who received 4-01-2018 legal document on 3rd Watch.” Dkt. 8 at 4. And Plaintiff has named the following new Defendants at SVSP: Correctional Officers Franco and Carmona. *Id.* Therefore, since Plaintiff has not named any of the remaining named Defendants from his original complaint, the Court DISMISSES without prejudice all claims against: Defendants Becerra, Harris, Garland, Swenson, Urbanski, Gutierrez, McGinnis, Salerno, Muniz, and Poodry. The Court also DISMISSES without prejudice the following Doe Defendants at SVSP: Assistant Warden; Watch Commander, I.G.I., Mailroom Sergeant, and B-Yard Captain; and B-Yard Sergeants.

The amended complaint is now before the Court for review pursuant to 28 U.S.C. § 1915A(a).

II. DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the

plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

In his amended complaint, Plaintiff states the following claims involving Doe Defendants: (1) denial of access to the courts by a Doe Defendant described as “B-Yard 3rd Watch [Correctional Officer] that received Federal Writ on 2-15-2018 SVSP B-4-127” because this Doe Defendant “illegally held and forged” this legal document from February 15, 2018 until March 6, 2018, Dkt. 8 at 6; and (2) denial of access to the courts by a Doe Defendant described as “[Correctional Officer] [in Administrative Segregation (“Ad Seg”)] Z-9 who received 4-01-2018 legal document on 3rd Watch” because this Doe Defendant allowed the legal document to be “ripped open by prison officials and returned to [Plaintiff] in a clear plastic bag with a notice from [the] mailroom sergeant on 4-02-2018,” *id.* at 7. Plaintiff claims that “[d]ue to this abuse of authority, [his] Federal Habeas Writ was denied [as] ‘untimely’ (*See Case #5:18-cv-501 Report and Recommendation, Judge Rozella A. Oliver.*)]” *Id.* at 8. Plaintiff now claims that he “does not seek monetary relief,” and instead “asks this Court for an investigation on said allegations.” *Id.* at 3.

Inmates have a right under the federal constitution to access the courts. The destruction or confiscation of an inmate’s legal papers may violate his constitutional right of access to the courts if it causes him an “actual injury” to court access, i.e., some specific instance in which an inmate was actually denied access to the courts. *See Silva v. Di Vittorio*, 658 F.3d 1090, 1101-03 & n.8 (9th Cir. 2011), *overruled on other grounds in Richey v. Dahne*, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015); *see, e.g., id.* at 1104 (allegation that defendants’ actions caused several pending suits to be

dismissed adequately alleged an actual injury); *Vigliotto v. Terry*, 873 F.2d 1201 (9th Cir. 1989) (temporary deprivation of legal materials from inmate's cell did not deprive him of meaningful access to the courts). Liberally construed, Plaintiff's allegations that the aforementioned Doe Defendants withheld and tampered with his legal documents appear to state a cognizable section 1983 claim for interfering with Plaintiff's right of access to the courts. However, regarding these Doe Defendants, Plaintiff describes them but does not know their names. Dkt. 8 at 4. Although the use of "John Doe" to identify a defendant is not favored in the Ninth Circuit, *see Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980); *Wiltsie v. Cal. Dep't of Corrections*, 406 F.2d 515, 518 (9th Cir. 1968), situations may arise where the identity of alleged defendants cannot be known prior to the filing of a complaint. In such circumstances, the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover their identities or that the complaint should be dismissed on other grounds. *See Gillespie*, 629 F.2d at 642; *Velasquez v. Senko*, 643 F. Supp. 1172, 1180 (N.D. Cal. 1986). Plaintiff's amended complaint is therefore dismissed with leave to amend for Plaintiff to provide to the Court the names of these Doe Defendants. Failure to do so will result in dismissal of these Doe Defendants without prejudice to Plaintiff filing a new action against him or her.

As to the remaining named Defendants in the amended complaint—Defendants Franco and Carmona—Plaintiff fails to set forth specific facts showing how each of these defendants actually and proximately caused the deprivation of a federally protected right, e.g., Plaintiff mentions these defendants in the list of defendants section of his complaint, but does not allege how either of them actually and proximately caused the deprivation of the federally protected rights of which he complains. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). Nor is it clear whether SVSP Librarian Colvin and the other mentioned unnamed SVSP prison staff members are defendants in this action because Plaintiff did not include them in the caption or in the list of defendants section of his complaint. *See Barsten v. Dep't of the Interior*, 896 F.2d 422, 423-24 (9th Cir. 1990) (plaintiff should be given leave to amend to name intended defendants). If Plaintiff wishes to add Librarian Colvin or any of the other unnamed SVSP prison staff members as Defendants, then Plaintiff must set forth specific facts showing how each of these defendants

actually and proximately caused the deprivation of a federally protected right, and Plaintiff must also provide to the Court the names of any of these Doe Defendants.

III. CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. The Court DISMISSES without prejudice all claims against Defendants Becerra, Harris, Garland, Swenson, Urbanski, Gutierrez, McGinnis, Salerno, Muniz, and Poodry. The Court also DISMISSES without prejudice all claims against the following Doe Defendants at SVSP: Assistant Warden; Watch Commander; I.G.I.; Mailroom Sergeant; and B-Yard Captain; and B-Yard Sergeants.

2. The amended complaint is DISMISSED WITH LEAVE TO AMEND. Within **twenty-eight (28) days** from the date of this Order, Plaintiff shall file a second amended complaint (“SAC”) correcting the aforementioned deficiencies of his claims against Defendants, as indicated above. In his SAC, Plaintiff needs to link each remaining named Defendant—including Defendants Franco and Carmona—to his claim by alleging facts showing the basis for liability for each individual defendant. Plaintiff should identify each involved person by name and link each of them to his claim by explaining what each defendant did or failed to do that caused a violation of his constitutional rights. *See Leer*, 844 F.2d at 634.

In addition, Plaintiff’s new allegations in his amended complaint that certain Doe Defendants tampered with his legal documents appear to state a cognizable section 1983 claim for interfering with Plaintiff’s right of access to the courts. In his SAC, Plaintiff must provide to the Court the names of the following Doe Defendants: “B-Yard 3rd Watch [Correctional Officer] that received Federal Writ on 2-15-2018 SVSP B-4-127”; and (2) “[Correctional Officer] [in Administrative Segregation (“Ad Seg”)] Z-9 who received 4-01-2018 legal document on 3rd Watch.” **Failure to do so will result in dismissal of these Doe Defendants without prejudice to Plaintiff filing a new action against him or her.**

3. Plaintiff must use the attached civil rights form, write the case number for this action—Case No. 20-cv-00307-YGR (PR)—on the form, clearly label it “Second Amended Complaint,” and complete all sections of the form. Because this SAC completely replaces the

original and amended complaints, Plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.), *cert. denied*, 506 U.S. 915 (1992); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987); *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981). He may not incorporate material from the original and amended complaints by reference. He must also specify whether he exhausted or was prevented from exhausting his administrative remedies with respect to any or all of those claims before filing this action.

Plaintiff's failure to file a SAC or to correct the aforementioned deficiencies by the twenty-eight day deadline will result in the dismissal of this action without prejudice.

4. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes while an action is pending must promptly file a notice of change of address specifying the new address. *See* L.R. 3-11(a). The court may dismiss without prejudice a complaint when: (1) mail directed to the *pro se* party by the court has been returned to the court as not deliverable, and (2) the court fails to receive within sixty days of this return a written communication from the *pro se* party indicating a current address. *See* L.R. 3-11(b).

IT IS SO ORDERED.

Dated: January 13, 2021


JUDGE YVONNE GONZALEZ ROGERS
United States District Judge